

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

HENRY D. MCMASTER, in his official capacity as
SECURITIES COMMISSIONER for the State of SC

☐ Plaintiff

v.

Capital Consortium Group; 3 Hebrew Boys; Et Al.

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-40-3116

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Warren V. Ganjehsani, Bar No. 17040

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Defendant's Attorney:

, Bar No.

Address:

phone: fax:

e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Temporary Injunction

Estimated Time Needed: 45 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

May 29, 2007

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C.A. No. 07-CP-40-3116

HENRY D. MCMASTER,)
in his official capacity as the)
SECURITIES COMMISSIONER FOR)
THE STATE OF SOUTH CAROLINA,)

Plaintiff,)

-vs-)

CAPITAL CONSORTIUM GROUP, INC.;)
3 HEBREW BOYS, LLC; TONY POUGH;)
TIM MCQUEEN; JOSEPH BRUNSON;)
AND FIRST CITIZENS BANK AND)
TRUST COMPANY, INC.,)

Defendants.)

FILED
2007 MAY 29 PM 3:44
BARBARA A. SCOTT
C.C.C. & G.S.

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION OR, IN THE
ALTERNATIVE, MOTION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER

TO: CAPITAL CONSORTIUM GROUP, INC.
3 HEBREW BOYS, LLC
TONY POUGH
TIM MCQUEEN
JOSEPH BRUNSON
FIRST CITIZENS BANK AND TRUST COMPANY, INC.

PLEASE TAKE NOTICE THAT the Securities Commissioner for the State of South Carolina ("Plaintiff"), pursuant to § 35-1-603(b) of the South Carolina Uniform Securities Act of 2005 (the "State Securities Act") and Rule 65, SCRCF, moves for a temporary injunction enjoining defendants Capital Consortium Group, Inc.; 3 Hebrew Boys, LLC; Tony Pough, Tim McQueen and Joseph Brunson (collectively, "Defendants") from withdrawing, liquidating,

transferring or otherwise having access to the First Citizens Bank and Trust Company, Inc. ("First Citizens") accounts ("Accounts") identified in Exhibit "A" attached hereto and incorporated by reference herein. Plaintiff also seeks an injunction prohibiting First Citizens from closing the Accounts or allowing anyone, including but not limited to Defendants, to have access to the Accounts during the pendency of this case. Should a hearing on Plaintiff's motion for temporary injunction not be held on or before May 31, 2007, Plaintiff moves in the alternative for an extension of the temporary restraining order issued by Judge G. Thomas Cooper on May 21, 2007, until such time as a hearing can be held on the motion for temporary injunction. In support of the instant motion, Plaintiff would show as follows:

FACTUAL AND PROCEDURAL BACKGROUND

Defendants, individually and by and through their agents and representatives (collectively referred to hereafter as "Defendants"), have been holding seminars in several states and foreign countries at which they have been offering an investment scheme ("Investments") to the public. Plaintiff has determined that the Investments, as described at these seminars, constitute "securities" under South Carolina law. Defendants are not licensed or registered to sell securities in South Carolina, and the Investments they offer are not and have never been registered as securities. Defendants have accumulated several million dollars from the unlawful sale of the Investments, and these monies are currently deposited in the First Citizens Accounts in Columbia, South Carolina.

As a result, Plaintiff filed a Summons, Complaint and Motion for Temporary Restraining Order against Defendants on May 21, 2007 in the Richland County Court of Common Pleas. On that date, Circuit Judge G. Thomas Cooper issued a temporary restraining order ("TRO") against

Defendants enjoining them from moving, liquidating or dissipating the Accounts and/or the funds therein. The TRO will expire May 31, 2007 at 5:55 p.m., unless extended by the court. Plaintiff now seeks a temporary injunction for the relief sought herein to remain in effect until such time as there has been a final adjudication on the merits of this case.

PARTIES

3 Hebrew Boys ("3HB") is a South Carolina limited liability company ("LLC") organized by Tony Pough ("Pough") of Columbia, Tim McQueen ("McQueen") of Columbia, and Joseph Brunson ("Brunson") of Hopkins, South Carolina. 3HB has business addresses at 4039 Monticello Road, Suite F, Columbia, South Carolina, 29203 and 1013 Broad River Road, Suite 275, Columbia, South Carolina, 29210, the latter of which is a UPS store.

Capital Consortium Group ("CCG") is a South Carolina limited liability company ("LLC")¹. CCG shares the same two business addresses as 3HB. CCG is organized by two entities known as "TMS Family Trust" and "Brunson Outreach," the latter of which was incorporated by Isolde Brunson who, upon information and belief, is Defendant Brunson's wife. CCG is managed by an entity known as "Faith Ministries."

Pough is a convicted felon who, in September 1998, pled guilty to embezzlement of federal funds in the United States District Court for the District of South Carolina. Pough's criminal acts included setting up bank accounts for the purpose of embezzling money.

Pough, Brunson and McQueen are residents of the State of South Carolina and, upon information and belief, reside in the greater Columbia area.

¹ CCG is incorrectly identified in the caption of this case as "Capital Consortium Group, Inc." rather than "Capital Consortium Group, LLC." Plaintiff will be amending the Complaint to correct this error.

DEFENDANTS' INVESTMENT SCHEME & BANKING ACTIVITIES

Defendants operate a fraudulent pyramid or Ponzi scheme in which they promise investors that their Investments will yield extremely high returns after a certain amount of money is invested over a finite period of time. Defendants primarily solicit these Investments through live seminars put on by a network of agents and representatives in several states. Among the groups that Defendants prey upon are members of the Armed Forces and their dependents, and Defendants have traveled to urban areas near military installations and to deployment zones overseas to solicit soldiers and their families. Defendants also target religious groups and congregations, and tailor their marketing efforts and seminar presentations accordingly.

Defendants fraudulently contend that their Investments produce high returns as a result of foreign exchange trading, and that such trading produces a nightly return of up to *five hundred percent*. Defendants also fraudulently represent that certain debts and expenses of its investors will be paid off simply by paying a one-time "processing fee" and waiting a prescribed amount of time before seeking the desired funds from CCG. Such representations include credit card debts of up to \$50,000 being paid off 13 months after payment of a \$5,250 fee, and college tuition payments of up to \$25,000 per year for four years being obtained 36 months after payment of a \$2,100 fee.

Once an investor enters into an investment contract ("Investment Contract") with CCG, the investor is assigned an application or member number ("Investor ID") that is noted on the face of the investor's check(s) and/or money order(s) to CCG. CCG then deposits the investor's check(s) and/or money order(s) in a pooled bank account, where that investor's funds are commingled with deposits from other investors.

Upon information and belief, Defendants deposited all or substantially all of the funds from these Investments in accounts at Bank of America ("BOA") for an unknown period prior to April 2007, at which time a BOA internal investigation into those accounts resulted in the filing of a "Suspicious Activity Report." Among the several suspicious activities occurring on these accounts were: (1) a wire transfer in December 2006 to "Insured Aircraft Title Service" for \$4,450,000 which, upon information and belief, was used to procure aviation services and/or aircraft for Defendants; (2) wire transfers in 2006 and 2007 to "Homes Real Estate Development" totaling \$3,690,000 which, upon information and belief, were used to purchase real estate for Defendants; and (3) wire transfers in March 2007 to "Coach LLC d/b/a Amadas Coach" totaling \$1,025,000 which, upon information and belief, were used to purchase a customized motor vehicle for Defendants. BOA ultimately advised Defendants it would be closing said accounts and Defendants were forced to move the subject funds elsewhere. Pough, Brunson, and McQueen had been signatories on (or otherwise associated with) all of the BOA Accounts.

In March and April 2007, Pough and McQueen, on behalf of CCG and 3HB, opened five bank accounts (previously referred to as "Accounts") at First Citizens Bank and Trust Company, Inc., into which they have deposited over seventeen million (\$17,000,000.00) dollars to date. Some of the Accounts' registration documents have notations identifying them as "CCG" or "Faith Ministry" accounts. The Accounts are all in the name of Daniel Development Group, LLC ("DDG"), which is another entity controlled by Pough who, along with McQueen, is a signatory on the Accounts. Virtually all of the hundreds of check and/or money order deposits into the First Citizens Accounts are made out to "Capital Consortium Group," as instructed at Defendants' seminars. Investor IDs and/or other similar notations appearing on the

overwhelming majority of these instruments indicate that they originated from CCG/3HB investors.

Several suspicious transactions have occurred on the First Citizens Accounts, including: (1) multiple wire transfers to "Alexander Development Group" in the Bahamas totaling half a million dollars which, upon information and belief, were used to purchase condominiums for Defendants; (2) withdrawals of \$444,000 and \$688,718 from the Accounts in May 2007 to purchase real estate for Defendants in the Columbia and Atlanta areas, respectively; and (3) a wire transfer in April 2007 to "Waters & Associates" for \$525,998.10 which, upon information and belief, was used to procure aviation consulting services for Defendants. First Citizens determined that suspicious activity was occurring on the Accounts and notified Defendants by letter dated May 21, 2007 that it intended to close Defendants' Accounts by May 31, 2007.

Clearly, this is a critical juncture at which judicial intervention is needed to make certain the Accounts remain intact until such time as there can be an adjudication on the merits.

GROUND FOR TEMPORARY INJUNCTION

"To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." Levine v. Spartanburg Regional Services District, Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). Obtaining an injunction requires the plaintiff to show that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). In considering whether to

grant an injunction, the court should balance the equities of the opposing parties on the particular facts of the case to determine which side is more entitled to relief. Levine, supra.

A. PLAINTIFF HAS DEMONSTRATED THAT IRREPARABLE HARM WILL RESULT IF AN INJUNCTION IS NOT GRANTED.

The numerous investors who have entrusted Defendants with sizable sums of money have suffered and will continue to suffer irreparable harm if the Defendants continue to pilfer the Accounts during the pendency of this case. "The sole purpose of an injunction is to preserve the status quo to avoid potential irreparable injury to the aggrieved party pending litigation." Levine, 367 S.C. at 464, 626 S.E.2d at 41. Defendants' investment scheme requires investors to leave their Investments in place for several months or even years before being allowed to "cash out" the promised returns. Consequently, Investors lack adequate means to control or even monitor Defendants' whittling away the Accounts in the interim. Defendants have spent over *two million dollars* of investor funds in a matter of a few short weeks since the Accounts were opened, and these funds have been used in a manner that is inconsistent with the Investment Contract and in violation of securities law. At the rapid pace Defendants are depleting the Accounts, there will be no money left for the investors to recover if a temporary injunction is not issued immediately.

B. PLAINTIFF HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS.

Defendants' acts set forth herein constitute violations of South Carolina securities law and the commission of fraud upon their investors, all of which will be established at the trial of this case. "When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise as to the existence of such a right."

Levine, 367 S.C. at 465, 626 S.E.2d at 42 (internal quotations omitted). A court "may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate." Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). "Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Id.

Defendants' entire investment operation constitutes an unlawful pyramid or Ponzi scheme designed to defraud investors. *See* S.C. CODE ANN. §§ 35-1-501(1), 35-1-501(3). *None* of the funds contained in the First Citizens Accounts has ever been invested in any foreign exchange, as represented by Defendants at their seminars, and Defendants' investment scheme cannot generate the inflated returns promised to investors in exchange for payment of certain "processing fees."

Defendants have violated and continue to violate the law by failing to register their Investments as securities, and by offering and selling securities in South Carolina to residents of this State and other states without being properly licensed or registered to do so. *See* S.C. CODE ANN. §§ 35-1-301, 35-1-401. Further, Defendants have committed and are committing securities fraud by failing to disclose to potential investors that Pough is a convicted embezzler, since his status as a felon is a material fact of which potential investors must be informed in connection with the offer, sale, or purchase of the Investments. *See* S.C. CODE ANN. § 35-1-501(2).

Defendants have converted funds from the Accounts for purposes not disclosed to investors when they were enticed to invest with Defendants and, upon information and belief, Defendants have converted funds from the Accounts for personal expenditures on several occasions. Plaintiff is entitled to issuance of an injunction based upon the likelihood of proving Defendants' foregoing violations of the State Securities Act at trial.

C. PLAINTIFF LACKS AN ADEQUATE REMEDY AT LAW.

A temporary injunction is needed in this case because the Accounts consist of pooled investor funds that must be preserved until the case can be heard on the merits. An equitable injunction rather than a remedy at law is necessary where ownership of the property at issue in a case is disputed or unclear. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005). Preservation of the property at issue until the matter has been adjudicated is the "quintessential hallmark of an injunction," whereas the legal remedy of attachment involves the court's taking jurisdiction of defendant's assets as security for a judgment that may be obtained by plaintiff. Grosshuesch, 367 S.C. at 1, 623 S.E.2d at 835.

The Accounts do not contain Defendants' *assets*; they contain funds belonging to all the investors that have been pooled together and are no longer traceable to any individual investor. Plaintiff is not seeking security for a *judgment*, but preservation of the investors' money until such time as the court and/or a receiver can determine an equitable distribution of the funds in the Accounts among the affected investors. Consequently, attachment provides an inadequate remedy at law and an injunction is the only appropriate relief.

RELIEF REQUESTED

Plaintiff asks that the court issue a temporary injunction (1) enjoining Defendants from withdrawing, liquidating, transferring or otherwise having access to the First Citizens Accounts during the pendency of this case; and (2) for an injunction prohibiting First Citizens from closing the Accounts or allowing anyone, including but not limited to Defendants, to have access to the Accounts during the pendency of this case.

Plaintiff requests that such injunction be binding upon the Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order for temporary injunction by personal service or otherwise.

Plaintiff moves, in the alternative, that if a hearing on the instant motion cannot be timely held on or before May 31, 2007, that the court extend the current TRO for good cause shown until such time as a hearing can be set on the motion for temporary injunction.

Plaintiff moves for this temporary injunction without the posting of a bond or other security. Rule 65(c), SCRCP (providing that "[n]o such security shall be required of the State or of an officer or agency thereof").

Respectfully submitted,

HENRY D. MCMASTER
Securities Commissioner
TRACY A. MEYERS
Assistant Attorney General
WARREN V. GANJEHSANI
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-4731

BY: 

ATTORNEYS FOR THE STATE OF
SOUTH CAROLINA

May 29, 2007

RULE 11, SCRCP CERTIFICATION:

Undersigned counsel certifies that consultation would serve no useful purpose as to the foregoing motion for temporary restraining order.

BY: 

Warren V. Ganjehsani

May 29, 2007

EXHIBIT A

1. Account 083125048501 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.
2. Account 083125049301 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.
3. Account 083125024601 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.
4. Account 083125011301 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.
5. Account 083125047701 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.